

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L ANKARA 002821

SIPDIS

DEPARTMENT FOR EUR/SE

E.O. 12958: DECL: 05/18/2015

TAGS: [PGOV](#) [PREL](#) [PHUM](#) [TU](#) [OSCE](#)

SUBJECT: TURKEY WRESTLES WITH ECHR RULING QUESTIONING DUE
PROCESS IN CONVICTION OF PKK TERRORIST LEADER OCALAN

REF: A. ANKARA 2726

[B](#). ANKARA 2525

(U) Classified by Polcouns John Kunstadter; reasons E.O.
12958 1.4 b and d.

[1](#)1. (C) Summary: Confusion and attempts to pass the buck among branches of government and between GOT and the Turkish State mark the Turkish reaction to European Court of Human Rights (ECHR) ruling that Turkey did not observe due process in interrogating and trying PKK terrorist leader Ocalan in 1999. It is too soon to see which avenue the Turkish authorities will choose to respond to the ECHR ruling, but the lack of clarity reflects how far Turkey still is from rule of law and how much it remains mired in law of rule. End summary.

[1](#)2. (C) In the wake of the May 12 ruling by the European Court of Human Rights (ECHR) Grand Chamber that convicted PKK terrorist leader Abdullah Ocalan did not receive a fair trial (reftels), it remains unclear how the Turkish authorities will handle the case. Speculation has focused on a section of the ECHR's ruling that refers to "a retrial or a reopening of the case" as a judicial remedy. Attorney contacts say there is no provision in Turkish law for "reopening" a case, and that such language has not been included in previous ECHR rulings against Turkey. It is widely rumored that judge Riza Turmen, Turkey's ECHR representative, is responsible for including the reference.

[1](#)3. (U) According to some legal interpretations, a reopening of the case would not be significantly different from a retrial. The court would hold sessions with witnesses, attorneys, and spectators. The only difference would be that Ocalan would maintain the legal status of a convict, rather than a suspect with a presumption of innocence. Other attorneys, however, argue that a court could meet the ECHR's requirements by reopening the case without holding a court session. Under this scenario, judges would examine the case file to determine whether the violations noted by the ECHR could have changed the outcome of Ocalan's 1999 trial. If they determine that the outcome would not have changed, the case would be closed. Turmen seemed to be pointing in this direction during a May 16 TV interview in which he said a court could reopen the case without holding a trial.

[1](#)4. (U) Ocalan's attorneys have not yet applied to the Ankara Heavy Penal Court for a retrial; they have a one-year deadline to do so. There is no official time limit for the court to respond to the application, meaning that Turkish authorities can delay the process while determining how to handle the case.

Comment

[1](#)5. (C) A long-standing member of the Council of Europe, Turkey should theoretically be prepared to handle such a ruling. But until 2002 it was not even possible to get a retrial in Turkey based on an ECHR ruling. Opponents of the ruling AK Party (AKP), including the opposition Republican People's Party (CHP), President Sezer, and the military, are keen to use the ruling against AKP. All have been making public statements portraying the ruling as a political attack on Turkey or trying to pin responsibility for action on AKP.

[1](#)6. (C) Conscious of the severe political and social tension that could grip Turkey if Ocalan gets a re-trail and uses the stand as a bully pulpit, AKP leaders are wary of acknowledging flaws in the 1999 trial or openly supporting the ECHR's authority to overrule Turkish courts. AKP is trying to pass the buck to the judiciary. Members of AKP's Islamist base are disturbed by the ruling, which they view as evidence that the court has political aims. Noting that the ECHR has upheld the ban on headscarves in educational institutions and the closing of Islamist parties, they argue that the court favors Kurdish separatists but not Muslims. In short, the legal and political unease sparked by the Ocalan verdict reveals how far Turkey is from rule of law and how deeply the country is still mired in law of rule.

EDELMAN